

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 3:08-mj-107
)	3:08-cr-106-6
Sean Anthony Ogle,)	
)	
Defendant.)	

TRANSCRIPT OF
VIDEOCONFERENCE PROCEEDING

Taken at
United States Courthouse
Bismarck, North Dakota
October 21 and 22, 2008

BEFORE THE HONORABLE CHARLES S. MILLER, JR.
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --

APPEARANCES

MR. BRETT M. SHASKY (by videoconference from Fargo)
U.S. Attorney's Office
Quentin N. Burdick U.S. Courthouse
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FOR THE UNITED STATES

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MR. JOHN T. GOFF (by videoconference from Fargo)
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FOR THE DEFENDANT

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1 (The above-entitled matter came before the Court, The
2 Honorable Charles S. Miller, Jr., United States District Court
3 Magistrate Judge, presiding, commencing at 3:33 p.m., Tuesday,
4 October 21, 2008, in the United States Courthouse, Bismarck,
5 North Dakota; counsel appearing on behalf of the respective
6 parties as hereinbefore indicated:)

7 (The following proceedings were had and made of
8 record by videoconference from Bismarck to Fargo:)

03:33 9 THE COURT: We'll go on the record in Magistrate's
10 Number 3-08-107, *United States of America versus Sean Anthony*
11 *Ogle*. We're proceeding today by videoconference. Present in
12 Bismarck is the Court and Court staff. Would the parties in
13 Fargo please note their appearances for the record?

03:34 14 MR. SHASKY: Your Honor, Assistant U.S. Attorney
15 Brett Shasky on behalf of the United States.

16 MR. GOFF: John Goff, Your Honor, Montgomery Goff &
17 Bullis of Fargo for the defendant, Sean Ogle, who is seated
18 directly to my right.

19 THE COURT: Mr. Goff, have you been appointed yet?

03:34 20 MR. GOFF: I was contacted by the clerk's office
21 yesterday on a CJA appointment and asked if I would accept it,
22 and I said that I would. That's all I've -- but I haven't seen
23 any paperwork.

24 THE COURT: Okay.

03:34 25 MR. GOFF: With the exception of the Complaint and

1 the Affidavit in support, I've seen that.

2 THE COURT: Right. Okay. Mr. Ogle, are you
3 requesting that the Court appoint an attorney to represent you
4 for the proceedings in this district?

03:34 5 THE DEFENDANT: I am, yes.

6 THE COURT: I want to ask you some questions about
7 your financial qualifications. Do you have a checking account
8 or a savings account?

9 THE DEFENDANT: I don't.

03:35 10 THE COURT: How much -- could you pull the microphone
11 up to you, please? How much cash do you have available to you
12 today, not present in Fargo, but available to you?

13 THE DEFENDANT: None.

03:35 14 THE COURT: I see that you own a residence, is that
15 correct?

16 THE DEFENDANT: Yes, me and my mother own it.

03:36 17 THE COURT: Based on those responses and the other
18 information that's contained in the Pretrial Services Report
19 from the District of Minnesota, I find that you're entitled to
20 court-appointed counsel, and I'm going to appoint Mr. Goff to
21 be your attorney.

22 Let's proceed then to the issue of the preliminary
23 hearing. Are the parties ready to proceed on the preliminary
24 hearing?

03:36 25 MR. SHASKY: Yes, Your Honor.

1 MR. GOFF: Yes, Your Honor, ready to proceed on the
2 preliminary hearing. There is one procedural matter, though,
3 that I would like to put on the record at the outset --

4 THE COURT: Okay.

03:36 5 MR. GOFF: -- regarding the preliminary.

6 THE COURT: Go ahead.

7 MR. GOFF: Thank you. My review of the
8 documentation, the docket sheet entries from the District of
9 Minnesota indicate that my client's initial appearance before
03:36 10 Magistrate Judge Franklin L. Noel of the District of Minnesota
11 was on October 3, 2008, on the charges from the District of
12 North Dakota. They then conducted a detention hearing and
13 removal hearing on October 6, 2008, before Magistrate Judge
14 Jeffrey J. Keyes, also in the District of Minnesota, and he was
03:37 15 ordered committed to this district to face charges here.

16 So it seemed to me that the initial appearance was on
17 October 3rd, and at the very latest the detention hearing was
18 on October 6th. And the preliminary hearing, since he is in
19 custody and has been in custody continuously since that time,
03:37 20 is required pursuant to Rule 5.1 to be conducted within ten
21 days after his initial appearance if he's in custody, which he
22 is. And we are now at October 21st, which is certainly outside
23 that ten-day limit, and so I think that that rule itself has
24 been violated.

03:38 25 There is a provision for extending the time, which

03:38

1 talks both in terms of the defendant's consent, which he has
2 not given at all to the best of my knowledge, certainly not
3 since I've talked with him today, or otherwise the magistrate
4 judge may extend time limits only on a showing that
5 extraordinary circumstances exist and justice requires the
6 delay. I don't think, to the best of my knowledge, that has
7 happened. And we are, I would say, roughly five days -- at
8 least five days, maybe as many as eight days beyond the ten-day
9 limit.

03:38

10 THE COURT: Mr. Shasky?

03:39

11 MR. SHASKY: Your Honor, I think clearly from the
12 date of his initial appearance in the District of Minnesota, we
13 are beyond the ten days. However, and I'm not sure -- I just
14 found out at about 11:30 this morning that he was even in the
15 District of North Dakota, and I have not been able to check to
16 see when he was actually brought into our district. I don't
17 know what the reason for the delay in scheduling this was.
18 Obviously that is something that's done by the Court, and I
19 don't know what happened in that regard.

03:39

20 The rule isn't clear either, Judge, as far as if
21 having made his initial appearance in a different district and
22 having a preliminary hearing here in our district, where he's
23 been charged, if that kind of tolls that ten-day period. It's
24 just not clear under Rule 5.1 if that's intended or not.

03:40

25 MR. GOFF: Your Honor, 5.1(b) does refer to selecting

03:40 1 a district, and it says the defendant arrested in a district
2 other than where the offense was allegedly committed may elect
3 to have the preliminary hearing -- may elect to have the
4 preliminary hearing conducted in the district where the
5 prosecution is pending. I don't know if he was ever asked for
6 an election, but the subsequent -- or the following subdivision
7 which I referred to earlier that said the ten-day limit, it
8 just says the magistrate judge must hold the preliminary
9 hearing within a reasonable time, but no later than ten days
03:40 10 after the initial appearance if he's in custody. So it does
11 talk about different districts, but doesn't say anything about
12 tolling the time limit or extending it.

13 MR. SHASKY: Your Honor, I did have a chance just now
14 to ask one of our deputy U.S. marshals as to when this
03:41 15 defendant was brought to our district. And I'm advised that he
16 was brought into our district from the District of Minnesota on
17 October 15th, so he's been here for six days.

18 MR. GOFF: Again, Your Honor, there's nothing in the
19 rule to talk about tolling on those basis -- on that basis.

03:42 20 THE COURT: I'm looking at the documentation that
21 I've been provided from the District of Minnesota, and I don't
22 see anything specifically that indicates that the defendant
23 requested a preliminary hearing in this district one way or the
24 other.

03:43 25 MR. GOFF: Your Honor, John Goff. I agree. From

1 what I've seen in the docket text, that doesn't -- isn't
2 included. However, I would just state that that provision,
3 5.1, Sub (b) is a permissive election. It says may elect.

4 THE COURT: Right.

03:44 5 MR. GOFF: And 5.1, Sub (c), of the scheduling is
6 mandatory. The Court must hold a preliminary within ten days
7 in either district, it would appear to me. It doesn't provide
8 for a remedy that I can see in the rule, nor have I seen one in
9 my review of the advisory committee notes. So it would be my
03:44 10 request that if the Court does find that I'm correct in my
11 assessment that there's been a violation of that time limit,
12 then I would ask that the Complaint be dismissed.

13 THE COURT: Well, the defendant was seen at his
14 initial appearance on October 3rd, and then his removal and
03:45 15 detention hearing was on the 6th. And so sometime between the
16 6th and the 15th he was -- the transport process started. And
17 assuming the proffer is correct, he did not reach this district
18 until the 15th, and I don't know how long that process took. I
19 don't know whether he was transported, for example, on the 14th
03:46 20 and arrived on the 15th or whether they started the
21 transportation process on the 7th and he arrived here on the
22 15th.

23 MR. GOFF: According to the text in the docket, Your
24 Honor, the commitment to another district, committing him to
03:46 25 the District of North Dakota, was signed by a magistrate. It

1 appears to be October 10th it was signed. Now, after that, I
2 don't know.

3 THE COURT: Okay.

03:46 4 MR. SHASKY: Your Honor, as I'm looking at what
5 Mr. Goff, I think, was just mentioning, the commitment to
6 another district form that was certified on the 10th, I believe
7 that is something that was received by our marshals on the
8 11th, and that's -- it took them four days, basically, to get
9 somebody down there and get him back to North Dakota. So as of
03:47 10 the 11th is the first date we're made aware that they should go
11 and get him even.

12 THE COURT: But by the 11th we were two days short of
13 the deadline for the preliminary hearing.

03:47 14 MR. GOFF: That sounds to be correct, Your Honor. I
15 don't dispute the facts that Mr. Shasky is relating through the
16 marshal service. I don't dispute those at all. I just think
17 that the rule is mandatory, and the time has expired by a
18 number of days.

03:47 19 THE COURT: Well, Mr. Shasky, what I'm going to do
20 today is that I'm going to take any testimony that you want to
21 present, and I'm going to require you to submit a brief by noon
22 tomorrow outlining why I should not dismiss the Complaint.

23 MR. SHASKY: That's fine, Your Honor.

03:48 24 THE COURT: And I'm going to continue the hearing
25 until -- what's your schedule tomorrow, Mr. Goff?

03:48 1 MR. GOFF: Your Honor, tomorrow I have to be in
2 Crookston, Minnesota, for a hearing at 11 o'clock in the
3 morning, so I anticipate I'll be leaving by about -- at least
4 by 9:30. And if everything goes as planned, I'll be out of
5 Crookston by noon and back here by about 1:30.

6 THE COURT: I've got another matter that I've got, I
7 think, scheduled from Fargo by video at 1 o'clock tomorrow.
8 Would it be possible for you to come back to the courthouse
9 when you get done in Crookston, whenever that may be, Mr. Goff?

03:48 10 MR. GOFF: Yes, that's fine.

11 THE COURT: I'm going to continue the hearing then
12 until tomorrow to address your objection. But I'm going to
13 tell you, Mr. Shasky, my understanding of the rules is that the
14 United States has ten days to -- I mean, there's ten days to
03:49 15 hold the preliminary hearing, and the defendant has to waive
16 the ten days or request that the hearing be held in the
17 district of where the charge originates out of. And absent one
18 of those two things, then I think it was incumbent upon the
19 system, whether it be the United States or the court system, to
03:49 20 hold the preliminary hearing within ten days of the date that
21 he first appeared before the magistrate in Minnesota.

22 Now, I can be convinced otherwise. You can also make
23 your other -- whatever argument you wish to make on Rule 5.1
24 that there's some exceptional circumstances that should apply
03:50 25 here, but I'm not clear as to what that would be, so you need

1 to convince me by noon tomorrow.

2 MR. SHASKY: All right.

3 THE COURT: You can fax -- you can file the brief by
4 CM/ECF, and I'll look on my computer at noon tomorrow.

03:50

5 MR. SHASKY: I'll do that, Your Honor.

6 THE COURT: Mr. Goff, is there any objection to my
7 considering this matter by videoconference?

8 MR. GOFF: No, we have no objection to that, Your
9 Honor. We requested that it be had as soon as possible.

03:50

10 THE COURT: You may proceed to call whatever witness
11 you want to call, Mr. Goff -- I mean Mr. Shasky. Sorry.

12 MR. SHASKY: Thank you, Your Honor. Your Honor, I do
13 have one witness. That is Detective Charles Anderson. He's
14 with the DEA Task Force. I'm not sure where you want to have
15 him sit so you can see him.

03:51

16 THE COURT: You can have him sit right between you
17 and Mr. Goff, is fine. Would the witness please stand and
18 raise your right hand, please.

19 CHARLES ANDERSON,

03:51

20 having been first duly sworn, was examined and testified as
21 follows:

22 MR. SHASKY: Your Honor, if I could inquire, I know
23 this is from the east side of the state on this case, so I
24 don't know if you've had an opportunity to go through the
25 Affidavit that came with the Complaint.

03:51

1 THE COURT: I have.

2 MR. SHASKY: Okay. Detective Anderson is the affiant
3 on that Complaint as well, so I'm going to try and shorten
4 things up a little bit if I can because of that.

03:51 5 DIRECT EXAMINATION

6 BY MR. SHASKY:

7 Q. Could you please state your name?

8 A. Charles Anderson.

9 Q. And where are you employed?

03:52 10 A. Clay County Sheriff's Office, Moorhead, Minnesota.

11 Q. And are you also on the DEA Drug Task Force here?

12 A. Yes, that's correct.

13 Q. And your area of responsibility is what?

03:52 14 A. Narcotics enforcement both at the state level and the
15 federal level.

16 Q. And with regard to those duties, Detective Anderson, did
17 you become involved with an investigation of a drug conspiracy
18 that involved Sean Anthony Ogle?

19 A. Yes, I did.

03:52 20 Q. And through the course of your investigation, did you
21 become familiar with information concerning his involvement?

22 A. Yes, I did.

23 Q. And did you put that information together in the form of
24 an affidavit in this case?

03:52 25 A. Yes, that's correct.

1 Q. And did you also present that affidavit to Magistrate
2 Judge Klein here in Fargo on October 2nd, along with a Criminal
3 Complaint?

4 A. Yes, I did.

03:53

5 Q. With regard to the information that is contained in
6 Exhibit B, your Affidavit to that Complaint, is everything in
7 that Affidavit true and correct to the best of your knowledge?

8 A. Yes, it is.

9 Q. Is there anything in there that you would wish to change?

03:53

10 A. No.

11 MR. SHASKY: Your Honor, at this point we would
12 submit the information in the Affidavit that's been filed with
13 the Complaint, and I will ask Detective Anderson some
14 additional questions about some other information on this, if
15 that's acceptable with the Court to proceed in that fashion.

03:53

16 THE COURT: So you're proffering Exhibit B to the
17 Complaint and asking the Court to accept that as part of the
18 record for the preliminary hearing?

19 MR. SHASKY: Yes, Your Honor.

03:53

20 THE COURT: Any objection, Mr. Goff?

21 MR. GOFF: Well, the witness is here, Your Honor.
22 The affiant is here. I would prefer that he just provide the
23 testimony directly, so, yes, I would object to it as a hearsay
24 statement when the witness is here to provide that statement.
25 I know hearsay is admissible, but, I mean, his Affidavit, when

03:54

1 he's here to testify and present the facts himself, I would
2 think would be a preferable procedure.

03:54 3 THE COURT: well, I'm going to overrule the
4 objection. Hearsay is permissible for a preliminary hearing,
5 and the defendant is available for your examination -- or I
6 mean not the defendant. I mean Mr. Anderson, the affiant, is
7 available for your examination, but, Mr. Shasky, I think it
8 would be prudent on your part to conduct some further inquiry
9 and just not rest on the Affidavit.

03:54 10 MR. SHASKY: Your Honor, we have additional
11 information that we will provide.

12 Q. (MR. SHASKY CONTINUING) Detective Anderson, have you had
13 -- since the time of this Affidavit, have you had additional
14 information come your way with regard to Mr. Ogle's involvement
03:55 15 in this drug conspiracy?

16 A. Yes, I have.

17 Q. Could you tell us what else you've learned?

18 A. well, in addition to the information that was provided by
19 Jared Nikle, Todd Vise and Paula Harland, we've also
03:55 20 interviewed a lady by the name of Michelle Foss, who was a
21 participant in the case which initially led to Sean Ogle's
22 information being provided. Michelle Foss was involved with
23 Richard Heyen, who was the subject of a search warrant after a
24 sale of methamphetamine.

03:55 25 Michelle Foss assisted Richard Heyen in the retrieval

03:56 1 of additional methamphetamine from his residence and attempted
2 to dispose of it. The disposal of the methamphetamine led to
3 her arrest after she had delivered the meth. to an individual
4 who was cooperating with the Fargo Police Department. She has
5 signed an agreement to cooperate and provide that information
6 to myself during an interview, and she indicated that she had
7 knowledge of Mr. Heyen acquiring the methamphetamine and
8 attempted to dispose of it. She knew of Mr. Heyen's
9 involvement in the sale of methamphetamine and had used
03:56 10 methamphetamine with him.

11 She also advised me that she was aware that Christine
12 Artamenko, who is a girlfriend of Todd Vise who was arrested on
13 the same date with Richard Heyen, Christine Artamenko had
14 advised Michelle Foss that she was going to contact Sean Ogle
03:57 15 with reference to the arrest of Heyen and Todd Vise. After
16 Mr. Vise had been arrested, he initially provided a statement
17 and since has agreed to cooperate with the United States
18 Government and has provided additional information, which
19 basically corroborated information provided concerning Sean
03:57 20 Ogle and the fact that Ogle was distributing methamphetamine to
21 individuals in the Fargo, North Dakota, area.

22 After -- and in addition to, I've also interviewed a
23 female by the name of Jessica Seeley, who resided with Jay
24 Weist. Jay Weist was the subject of a search warrant and
03:58 25 during the search warrant provided information that he had

1 acquired meth. and marijuana from Sean Ogle. Jessica Seeley
2 stated that she spent a considerable amount of time with Jay
3 Weist during the summer of 2008 and she became aware that Jay
4 Weist was acquiring multiple-ounce quantities of
5 methamphetamine from Sean Ogle. She also overheard Jay Weist
6 talk about the methamphetamine coming from a source being in
7 Arizona and the source being referenced to the name of Sean and
8 Candy, Candy being Candice Peterson, who is Sean Ogle's
9 girlfriend.

10 In addition then, Justin Peterson, who has been
11 indicted in this case and has signed an agreement with the
12 United States Government to cooperate, provided a proffer
13 interview on the 15th of this month. He identified Candice
14 Peterson by a photograph line-up and also Sean Ogle by a
15 photograph line-up and stated that they were persons that were
16 involved in the distribution of methamphetamine with Jason Moe,
17 who also has been indicted in this case. Peterson identified
18 Sean Ogle as being with Jason Moe in Felton, Minnesota, where
19 methamphetamine had been distributed to Justin Peterson this
20 summer.

21 In addition, of course, there was the arrest of Jason
22 Moe on the same day that Mr. Ogle was taken into custody, and
23 Mr. Moe did identify Sean Ogle as being a co-conspirator with
24 him and had been distributing methamphetamine for several
25 years. The information that has been provided to me by these

04:00

1 various individuals has come from independent sources and seem
2 to cross-corroborate each other, very similar information. I
3 do not believe any of the defendants have had the ability to
4 review any of the disclosure, so they would not have access to
5 the documents that I provided, and thus would only be relying
6 on their own experience or recollection.

04:00

7 Q. Detective Anderson, are all of these -- through your
8 investigation, have you been able to determine if some of these
9 people giving information on Mr. Ogle actually even know or
10 associate with each other?

04:01

11 A. I believe some of these individuals do not know each other
12 and are kind of separated by being involved in kind of a
13 different segment of the conspiracy.

04:01

14 Q. And as far as Mr. Ogle's prior history, he does have some
15 type of involvement with the court system, is that correct?

04:02

16 A. I'm aware that Mr. Ogle was convicted of a cocaine
17 violation in the District of North Dakota, I believe, in the
18 late eighties or early nineties and also a felon in possession
19 of a firearm in 2002 in the Minneapolis, Minnesota, area.

20 Q. Is there some connection between some of these people that
21 have already been indicted and others who may be targeted or
22 have cooperated, like Todd Vice and Jared Nikle and Justin
23 Peterson? Any of these guys -- Jay Weist, I think you
24 mentioned, Richard Heyen and Mr. Ogle, is there a connection
25 that extends beyond just the recent few years?

04:02 1 A. Yes. Based on what I've been told by the various people
2 I've debriefed, that Ogle, Heyen, Todd Vice, Jay Weist and
3 other individuals knew each other in Fargo, North Dakota,
4 through the high school, grew up and then developed a
5 relationship from that early experience on the activity stated,
6 ongoing from that point.

7 MR. SHASKY: That's all I have, Your Honor.

8 THE COURT: Mr. Goff.

9 MR. GOFF: Thank you, Your Honor.

04:03 10 CROSS-EXAMINATION

11 BY MR. GOFF:

12 Q. Detective Anderson, according to the affidavit, you got
13 information about Sean Ogle from Richard Heyen?

14 A. No, not from Richard Heyen.

04:03 15 Q. Todd Vice?

16 A. Todd Vice.

17 Q. Okay. And Paula Harland?

18 A. Paula Harland, yes.

19 Q. And if I understand correctly, Paula Harland got her
04:03 20 information from Jay Weist?

21 A. Correct.

22 Q. She didn't -- she didn't -- if I understand correctly, she
23 didn't articulate any specific personal information about Sean
24 Ogle, just what she got from Jay Weist?

04:03 25 A. Observations of what took place at the Weist residence,

1 overbearing conversations or phone calls, information that was
2 related directly to her by Jay Weist.

3 Q. But she did say she overheard some phone conversations?

4 A. I believe there was conversations, whether it was on the
5 phone or person to person.

6 Q. Okay. And who is Paula Harland? What's her connection to
7 this investigation?

8 A. She is a person that was spending time at Jay Weist's
9 residence for the purpose of babysitting, and would have done
10 so over the summer of 2008.

11 Q. She was a babysitter?

12 A. Correct.

13 Q. Did she get arrested?

14 A. She is in custody in Cass County jail right now for, I
15 think, bad checks.

16 Q. Okay. Not related to this investigation?

17 A. No.

18 Q. Jessica Seeley, you said, lived with Jay Weist, I think,
19 over the summer of 2008, is that correct?

20 A. Correct.

21 Q. And was she involved in this investigation?

22 A. She is involved in bad checks. She was a person that was
23 identified as stealing checks from Jay Weist's residence, along
24 with some other individuals that are involved in a different
25 drug conspiracy. I believe the checks were then forged, and

1 that is what is her criminal complaint at this point.

2 Q. Okay. But not directly involved in this drug conspiracy?

3 A. Other than the fact that she was there and used drugs and
4 would have been involved, but she's not charged in this
5 conspiracy.

6 Q. Okay. And Todd Vice, is he charged in this conspiracy?

7 A. He is pending. He's being investigated by the U.S.
8 Government and at some point will be facing charges, either
9 state or federal.

10 Q. Okay. But he has already given you -- according to the
11 Affidavit, he's given you a statement or given you information
12 about Mr. Ogle in this drug conspiracy.

13 A. That's correct.

14 Q. And including he acknowledged his own involvement to some
15 extent.

16 A. Correct.

17 Q. Now, Michelle Foss, she is a name not included in the
18 Affidavit. She is somebody that's arisen in the investigation
19 since the Affidavit?

20 A. She was arrested, I believe, a couple days after Richard
21 Heyen and Todd Vice were contacted or arrested at the search
22 warrant. She was arrested, I believe, like two days
23 afterwards, when she attempted to dispose of methamphetamine
24 that was left over at Mr. Heyen's residence. She is charged in
25 Cass County, North Dakota, state court.

1 Q. She's entered into a cooperation agreement with the
2 Government?

3 A. Yes.

4 Q. Does that -- what does that agreement include as far as
5 her being criminally prosecuted?

6 A. I have not seen the cooperation agreement, so I couldn't
7 answer that question.

8 Q. Have you been told anything about it?

9 A. I believe that she is to face state charges, but not to be
10 charged in the federal investigation.

11 Q. Did I understand you to say Richard Heyen has a
12 cooperation agreement?

13 A. No, he has not.

14 Q. That's not right. Christine Artamenko?

15 A. Correct.

16 Q. She was a girlfriend of Todd Vice?

17 A. Yes.

18 Q. And you interviewed her as well?

19 A. I spoke to her on one occasion and anticipating further
20 contact.

21 Q. Has she given you any direct information about Mr. Ogle?

22 A. She has not at this point.

23 Q. Okay. Did Jessica Seeley give any direct information
24 about Mr. Ogle?

25 A. Just what she learned by her contact at the Weist

1 residence during the summer of 2008.

2 Q. Okay. Was that somebody other than Jay Weist?

3 A. No, Jay Weist.

4 Q. Now, did you say Justin Peterson --

04:08

5 A. Yes.

6 Q. -- has given a proffer, an interview?

7 A. Yes.

8 Q. And also entered a cooperation agreement?

9 A. Yes.

04:08

10 Q. And he has, I think you said, identified Mr. Ogle and
11 Candice Peterson?

12 A. Correct.

13 Q. And he also indicated that he was present when Jason Moe
14 and Sean Ogle were in Felton, Minnesota?

04:09

15 A. Justin Peterson lived in Felton, and Jason Moe was
16 bringing meth. up to Justin Peterson from The Cities. And on
17 at least one occasion Sean Ogle was with him when Jason Moe
18 delivered the methamphetamine. And then Justin Peterson also
19 observed Sean Ogle at Moe's residence in The Cities, and I
20 believe he also indicated that he saw Sean Ogle at Jared
21 Nikle's residence, who also provided a statement concerning
22 Ogle's involvement in the conspiracy.

04:09

23 Q. Jared Nikle did?

24 A. Yes.

04:09

25 Q. Does Jared Nikle have a cooperation agreement?

1 A. I do not believe he has signed one. He was initially
2 working on one and then since has been indicted, and he is
3 making overtures that he wishes to continue to cooperate.

04:10 4 Q. Do you know if Justin Peterson's cooperation agreement
5 discusses criminal prosecution at all?

6 A. You know, I don't know the terms. I believe that -- well,
7 he is indicted, and as far as the terms, I do not know.

8 Q. Okay. And Jason Moe was also interviewed by you?

04:10 9 A. Jason Moe provided a statement at the time he was
10 arrested.

11 Q. So he's also under a criminal prosecution?

12 A. He's indicted, correct.

13 Q. Indicted?

14 A. Yes.

04:10 15 Q. There's reference in here to -- in the Affidavit I'm
16 referring to of a search warrant at the residence of Jay Weist?

17 A. Correct.

18 Q. On September 17th?

19 A. Yes.

04:11 20 Q. Were you present at that time?

21 A. Yes, I was.

22 Q. And that was a search warrant that revealed some marijuana
23 and some United States currency?

24 A. Yes, that's correct.

04:11 25 Q. And that -- according to paragraph 29, it says that was at

1 the residence of Jay Weist at 1634 Third Street North in Fargo?

2 A. Correct.

3 Q. Back in paragraph 18 it talks about the residence of Jay
4 Weist and it says 1634 Second Street North. Which one of those
5 is correct?

6 A. I believe it's Third, 1634 Third Street North.

7 Q. So the "Second Street" at paragraph 18 is just a
8 typographical error?

9 A. Correct.

10 Q. And are you aware of any material in the investigation
11 that would indicate that my client has actually possessed any
12 of these controlled substances on his person or in his
13 constructive possession?

14 A. Mr. Ogle had methamphetamine, LSD, and marijuana on his
15 possession at the time he was arrested. He also had traded
16 some LSD to Sean -- or, excuse me, to Jason Moe at the time
17 that -- prior to his arrest that day, along with a seal stamper
18 from the County of Hennepin, I believe, that was traded for
19 some drugs.

20 Q. An official seal stamp?

21 A. Yes.

22 Q. Hennepin County?

23 A. I believe so. It was one of the counties. It was an
24 official seal, an old-fashioned stamper.

25 Q. Okay. Do you -- are you familiar with the circumstances

1 of my client's arrest?

2 A. Basic information.

3 Q. What can you tell us about that?

04:13 4 A. That he was observed at the Ogle -- or at the Moe
5 residence, observed going out to his vehicle and then returning
6 to the residence. There was a female that left and was talked
7 to by law enforcement, and they verified that Sean Ogle and
8 Jason Moe were in the residence. Sean Ogle then exited Moe's
9 residence and was followed by law enforcement and stopped for a
04:14 10 traffic violation, and then was interviewed by them and was
11 subsequently arrested when they observed, I believe, marijuana
12 in plain view in the motor vehicle.

13 Q. Do you know the identity of the female who gave that
14 information?

04:14 15 A. Let's see here. Barbara Gardner.

16 Q. Well, do you know anything about her?

17 A. You know, I do not.

18 Q. And just one more question. Do you know the traffic
19 violation that was committed before he was stopped?

04:14 20 A. I believe that was, the taillights were not functioning
21 properly and no seatbelt.

22 Q. Is this at night?

23 A. I believe it was during the daytime.

24 MR. GOFF: No further questions, Your Honor.

04:15 25

EXAMINATION

1
2 BY THE COURT:

3 Q. Officer Anderson, paragraph 13 of your Affidavit states
4 that Mr. Vice obtained quantities of methamphetamine from Mr.
5 Ogle. Do you see that?

6 A. Yes, sir.

7 Q. And how -- did Mr. Vice tell you that or one of your
8 officers working on the case?

9 A. Mr. Vice walked into Mr. Heyen's residence while we were
10 serving the search warrant, and I, along with another officer,
11 interviewed him. And during that interview he admitted to
12 possessing -- well, he had an ounce of methamphetamine on him,
13 and he identified that ounce as coming from Mr. Ogle and stated
14 that he had also delivered methamphetamine to Richard Heyen,
15 and that that methamphetamine came from Mr. Ogle and that he --

16 Q. When he -- when he said that or told you it came from Mr.
17 Ogle, did Mr. Ogle give it to him?

18 A. Yes, sir, that's what he told me.

19 Q. Likewise, in paragraph 31 of the Affidavit, Mr. Weist
20 suggests, at least according to your Affidavit, that he got a
21 gram or two of methamphetamine from Mr. Ogle, is that correct?

22 A. Yes, sir.

23 Q. Did -- what did he tell you in terms of how he acquired
24 that from Mr. Ogle? Did Mr. Ogle give it to him?

25 A. Yes. He said that he hadn't seen him for about a month,

1 but he admitted that he had acquired methamphetamine from him
2 hand to hand.

3 THE COURT: Anything further, Mr. Shasky?

4 MR. SHASKY: No, Your Honor.

04:17 5 THE COURT: Anything else, Mr. Goff?

6 MR. GOFF: No, Your Honor.

7 THE COURT: Do you have any other testimony you want
8 to present, Mr. Shasky?

9 MR. SHASKY: No, Your Honor. We would rest.

04:17 10 THE COURT: Anything from you, Mr. Goff, other than
11 argument?

12 MR. GOFF: No, Your Honor.

13 THE COURT: Well, I don't think it would be
14 appropriate for me at this point to rule on the probable cause
04:17 15 until I determine whether or not we should've even taken the
16 testimony, so we'll reserve that until tomorrow.

17 MR. GOFF: That's fine, Your Honor.

18 THE COURT: I indicated to Mr. Shasky that anything
19 you wanted to submit to me in writing had to be in by noon
04:18 20 tomorrow. If there's anything that you want to submit,
21 Mr. Goff, in addition to what you've already argued, you may do
22 so, and you can make any other argument you want tomorrow as
23 well.

24 MR. GOFF: Very well.

04:18 25 THE COURT: If there's nothing further, we'll stand

1 in recess then until as soon as we can assemble after you get
2 back from Crookston. Hopefully it will be about 1:30 tomorrow.

3 MR. GOFF: It should be by then, Your Honor, yes. I
4 will just come to the federal courthouse and let them know that
5 I'm here.

6 THE COURT: Very good. Court is adjourned. Thank
7 you.

8 (Concluded at 4:18 p.m., the same day.)

9 - - - - -

10 (The above-entitled matter came before the Court, The
11 Honorable Charles S. Miller, Jr., United States District Court
12 Magistrate Judge, presiding, commencing at 1:29 p.m.,
13 wednesday, October 22, 2008, in the United States Courthouse,
14 Bismarck, North Dakota; counsel appearing on behalf of the
15 respective parties as hereinbefore indicated:)

16 (The following proceedings were had and made of
17 record by videoconference from Bismarck to Fargo:)

18 THE COURT: We'll go on the record in Magistrate's
19 Number 3-08-107, *United States of America versus Sean Anthony*
20 *Ogle*. Yesterday we had attempted to conduct a preliminary
21 hearing, and there were issues raised as to whether or not it
22 was out of time, and we took some testimony. But it now
23 appears that it's much to do about nothing because the Court
24 has subsequently discovered that after the paperwork was
25 transmitted to this district, the order for detention in

01:31

1 Minnesota was entered as of record there. And that order of
2 detention reflects the fact that the hearing that took place in
3 Minnesota actually included the preliminary hearing, and that
4 the magistrate judge in the District of Minnesota determined
5 that probable cause existed. So I think absent somebody being
6 able to convince me otherwise, this disposes of the matter.
7 Mr. Goff.

8 MR. SHASKY: I agree with that, Judge.

9 THE COURT: Pardon me?

01:31

10 MR. SHASKY: I said I agree with that.

11 THE COURT: Okay. Now, is there anything else?

12 MR. GOFF: No, Your Honor. This appears to be an
13 appropriate order for detention, which indicates it was
14 included at the -- or a preliminary hearing, so I have no
15 reason to disagree with the Court's comments.

01:31

16 THE COURT: Okay. Is there anything else that the
17 defendant wants to raise at this time?

18 MR. GOFF: No, Your Honor.

01:32

19 THE COURT: Okay. Well, the defendant was ordered
20 detained by the magistrate judge in the District of Minnesota,
21 and that detention order is in effect, and consequently he is
22 detained. The defendant is detained until the time of trial.
23 Is there anything further from the United States?

24 MR. SHASKY: No, Your Honor.

01:32

25 THE COURT: Anything further from the Government --

1 or, I mean, not from the Government, from --

2 MR. GOFF: No, Your Honor, just to inquire. We'll be
3 notified then of further dates and scheduling, things like
4 that?

01:32

5 THE COURT: Yes. I don't have those right now in
6 terms of a --

7 MR. GOFF: That's fine. That's all I have, Your
8 Honor.

01:32

9 THE COURT: Do we have a trial date? No, he hasn't
10 been indicted yet, so there won't be -- Mr. Goff, if the
11 defendant has not been indicted within the next 30 days, you
12 can move for whatever relief might be appropriate.

13 MR. GOFF: That's fine. I will do that, Your Honor.

01:33

14 THE COURT: But that would be the next stage in the
15 process. Nothing further, court is adjourned. Thank you.

16 (Concluded at 1:33 p.m., the same day.)

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